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JURY TRIAL DEMANDED

4. Denied.

Jurisdiction and Venue

5. Defendants admit that this Court has jurisdiction over the present matter.

6. Defendants admit that venue is proper.

Parties

7. Admitted, upon information and belief.

8. Denied.

9. Denied as stated. On the contrary, the City of Reading is a city of the third class in the Commonwealth of Pennsylvania, with a principal place of business located at 815 Washington Street, Reading, PA. Defendant Sgt. Rauen is employed by the City of Reading, not the Reading Police Department. The Reading Police Department is the law enforcement arm of the City of Reading. Defendants deny the remaining averments contained in Paragraph 9.

10. Denied as stated. On the contrary, the Reading Police Department is the law enforcement arm of the City of Reading. Defendant Sgt. Rauen is employed by the City of Reading, not the Reading Police Department. Defendants deny the remaining averments contained in Paragraph 10.

11. Admitted in part, denied in part. Defendants admit only that, at all times material hereto, Sgt. Tim Rauen was employed by the City of Reading as a police officer. Defendants deny the remaining averments contained in Paragraph 11.

12. Denied.

Operative Facts

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Admitted in part, denied in part. Defendants admit only that Plaintiff received two (2) citations as a result of his conduct: one for public drunkenness and one for disorderly conduct/engaged in fighting – both summary offenses. Defendants deny the remaining averments contained in Paragraph 19 of the Complaint.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied. On the contrary, Plaintiff was found guilty beyond a reasonable doubt on both charges – public drunkenness and disorderly conduct – after a summary trial on December 10, 2009. *See* Non-Traffic Citation Docket Nos.: NT-0000830-09 and NT-0000831-09, which are public records and which are attached hereto collectively as Exhibit 1.

25. Denied.

26. Denied.

27. Denied.

Damages

28. Denied.

COUNT I

29. Defendants incorporate by reference their answers to Paragraphs 1 through 28, inclusive, of Plaintiff's Complaint, as if fully set forth at length.

30. Denied.

31. Denied.

COUNT II -- MONELL

32. Defendants incorporate by reference their answers to Paragraphs 1 through 31, inclusive, of Plaintiff's Complaint, as if fully set forth at length.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

WHEREFORE, Defendants respectfully request that the Court enter judgment in their favor and against Plaintiff, together with costs, disbursements, and attorneys' fees under, *inter alia*, 42 U.S.C. § 1988 and any further relief deemed appropriate by this Court.

AFFIRMATIVE DEFENSES

Defendants reserve the right to assert any and all applicable defenses to Plaintiff's claims. Defendants have not yet obtained discovery from Plaintiff or from third parties in connection with this action, and Defendants reserve the right to amend or otherwise supplement this pleading on that basis. Without limiting the generality of the foregoing and without regard to whether the defenses set forth below are affirmative defenses within the meaning of Fed. R. Civ. P. 8(c), and without conceding that any such defense must be set forth in their Answer, Defendants state as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to set forth a claim, in whole or in part, upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

At all times material hereto, Plaintiff was afforded all of the rights, privileges and immunities granted pursuant to the Constitution and laws of the United States and the Commonwealth of Pennsylvania.

THIRD AFFIRMATIVE DEFENSE

At no time material hereto did Sgt. Rauen or any other Reading Police Officer act in bad faith or in a willful, wanton, outrageous, reckless and/or malicious manner.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff suffered no injury or damages as a result of any unlawful acts or omissions by Sgt. Rauen or any other Reading Police Officer.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff assumed the risk of harm by his own conduct.

SIXTH AFFIRMATIVE DEFENSE

Any injury or damage sustained by Plaintiff was a direct and proximate result of Plaintiff's conduct.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, or otherwise subject to reduction by the doctrines of *res judicata* and/or collateral estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Pennsylvania Political Subdivision Tort Claims Act 42 Pa. C.S.A. § 8501 *et seq.*

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, or otherwise subject to reduction by

reason of Plaintiff's contributory negligence.

TENTH AFFIRMATIVE DEFENSE

At all times material hereto, the actions of Sgt. Rauen were appropriate under the circumstances and based upon a reasonable good-faith belief that they were justified under the law.

ELEVENTH AFFIRMATIVE DEFENSE

At all times material hereto, the actions of Sgt. Rauen were justified under the circumstances.

TWELFTH AFFIRMATIVE DEFENSE

At all times material hereto, Sgt. Rauen used only that amount of force that was reasonable and necessary under the circumstances, and such force was justified under applicable state and federal law.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages are limited and/or barred by the applicable state constitution, by the Fourteenth, Fifth and Eighth Amendments to the United States Constitution and by the laws of the United States and the Commonwealth of Pennsylvania.

FOURTEENTH AFFIRMATIVE DEFENSE

Merely negligent or careless conduct on the part of a police officer is insufficient to maintain a cause of action pursuant to 42 U.S.C. § 1983.

FIFTEENTH AFFIRMATIVE DEFENSE

No act or failure to act on the part of Sgt. Rauen or any other Reading Police Officer violated Plaintiff's constitutional rights.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants are immune from all or part of the claims set forth in Plaintiff's Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

At no time material hereto did the City of Reading or its Police Department adopt or permit, either formally or informally, a policy, custom or practice which tolerated or permitted the violation of the civil rights of any individual, including Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

At all times material hereto, the policies and procedures of the City of Reading and its Police Department have been reasonable and appropriate and have insured the protection of all rights, privileges and immunities of the public, including Plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

At all times material hereto, the procedures of the City of Reading and its Police Department for training, evaluating and, when necessary, disciplining police officers have been reasonable and appropriate and have insured the protection of all rights, privileges and immunity of the public, including Plaintiff.

WHEREFORE, Defendants respectfully requests that the Court enter judgment in their favor and against Plaintiff, together with costs, disbursements, and attorneys' fees under, *inter alia*, 42 U.S.C. § 1988 and any further relief deemed appropriate by this Court.

LAMB MCERLANE, PC

Dated: August 30, 2010

/s/ Janelle E. Fulton

David J. MacMain (Pa. I.D. No. 59320)

Janelle E. Fulton (Pa. I.D. No. 80027)

24 East Market Street – Box 565

West Chester, PA 19381-0565

(610) 701-3262

Attorneys for Defendants

*City of Reading, City of Reading Police Department,
and Sgt. Timothy Rauen*

CERTIFICATE OF SERVICE

I, Janelle E. Fulton, hereby certify that on this 30th day of August 2010, I caused the foregoing Answer with Affirmative Defenses to be served upon the following via the ECF system of the United States District Court for the Eastern District of Pennsylvania:

Matthew W. Weisberg, Esquire
Weisberg Law PC
7 South Morton Avenue
Morton, PA 19070
mweisberg@ppwlaw.com
Attorney for Plaintiff

This *Certificate of Service* and the said filing are intended to be available for viewing and downloading from the ECF system of the United States District Court for the Eastern District of Pennsylvania.

/s/ Janelle E. Fulton
Janelle E. Fulton

Exhibit 1

Magisterial District Judge 23-3-09**DOCKET**

COMMONWEALTH OF PENNSYLVANIA

v.
MENDOZA, JOSE

Docket Number: NT-0000830-09

Non-Traffic Citation Docket

Page 1 of 1

CASE INFORMATION

Judge Assigned:	LACHINA, DEBORAH P	Issue Date:	08/08/2009
OTN:		File Date:	08/10/2009
Arresting Agency:	READING CITY, POLICE DEPT	Case Disp:	Guilty By Trial
Arresting Officer:	CAMPOS, EDDIE A	Disp Date:	12/10/2009
Complaint/Incident #	P7841004-3	Requested:	\$0.00
County:	BERKS	Judgment:	\$0.00
Township:	READING CITY	Case Status:	Adjudicated

DEFENDANT INFORMATION

Name:	MENDOZA, JOSE	Address:	READING, PA 19601
Date Of Birth:	Redacted	Sex:	Male
		Race:	

CHARGES

#	Charge	Grade	Description	Disposition
1	18 § 5505	S	PUBLIC DRUNKENNESS	Guilty

CALENDAR

Schedule Date	Event Type	Status
12/10/2009 11:00 AM	Summary Trial	GT

CASE ACCOUNTING

Total Due:	\$470.50	Total Adj:	\$55.50
Total Paid:	\$350.00	Balance:	\$65.00

AFFIANT INFORMATION

Name: CAMPOS, EDDIE A

Magisterial District Judge 23-3-09**DOCKET**

COMMONWEALTH OF PENNSYLVANIA

v.

MENDOZA, JOSE

Docket Number: NT-0000831-09

Non-Traffic Citation Docket

Page 1 of 1

CASE INFORMATION

Judge Assigned:	LACHINA, DEBORAH P	Issue Date:	08/08/2009
OTN:		File Date:	08/10/2009
Arresting Agency:	READING CITY, POLICE DEPT	Case Disp:	Guilty By Trial
Arresting Officer:	CAMPOS, EDDIE A	Disp Date:	12/10/2009
Complaint/Incident #	P7841002-1	Requested:	\$0.00
County:	BERKS	Judgment:	\$0.00
Township:	READING CITY	Case Status:	Adjudicated

DEFENDANT INFORMATION

Name:	MENDOZA, JOSE	Address:	READING, PA 19601
Date Of Birth:	Redacted	Sex:	Male
		Race:	

CHARGES

#	Charge	Grade	Description	Disposition
1	18 § 5503 §§ A1	S	DISORDERLY CONDUCT ENGAGE IN FIGHTING - SUMMARY	Guilty

CALENDAR

Schedule Date	Event Type	Status
12/10/2009 11:00 AM	Summary Trial	GT

CASE ACCOUNTING

Total Due:	\$301.00	Total Adj:	\$27.50
Total Paid:	\$0.00	Balance:	\$273.50

AFFIANT INFORMATION

Name: CAMPOS, EDDIE A